IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

ORDER

1. Raman Lal Vs. State of Rajsthan & Others
(SB Civil Writ Petition No.156/1996)

2. Mahaveer Prasad Jain Vs. State of Rajsthan & Others
(SB Civil Writ Petition No.1346/1996)

3. Smt.Vijay Kumari & Ors. Vs. State of Rajsthan & Others
(SB Civil Writ Petition No.285/1996)

4.Shambhu Dayal Goyal & Ors. Vs. State of Rajsthan & Others
(SB Civil Writ Petition No.701/1996)

SB Civil Writ Petitions under Article
226 of the Constitution of India.

Date of order: October 26, 2006.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. G.L.Pareek Sr.Advocate] for the petitioners.
Mr. A.N.Sharma]
Mr. Jinesh Jain]

Mr. J.K.Singhi] for respondent RSEB.
Mr. Satish Khandelwal]
Mr. R.P.Kuldeep, Addl. Govt.Advocate for the State.

BY THE COURT:

Core question springing up for consideration in all these writ petitions is:-

> Whether after taking possession of the acquired land, the State Government can de-acquire it under section 48 of the Land Acquisition Act (for short `the Act')?

2. This question arises in the circumstances set out below:-

A notification under section 4 of the acquisition of land in question was published on May 25, 1993. The Land Acquisition Officer (LAO) filed his report under section 5A of the Act on July 30, 1993 recommending acquisition of entire land. Thereafter notification under section 6 read with Section 17(1)(4) was published on September 24, 1993. The petitioners were asked vide notices issued under section 9(1) of the Act to file their respective claims. The petitioners thereafter filed their claims. Compensation was assessed vide order dated November 30, 1993 under section 17(3A) of the Act. Interim market value was assessed by the LAO which was paid to the petitioners in writ petitions No.701/1996 and 285/1996 but the amount of 80% compensation under section 17(3A) was not paid to the petitioners in writ petition No.156/1995. On April 8, 1994 the possession of the entire land covered by the notification was taken. But on September 1, 1995 the LAO passed a draft award and sent the same for approval to the State Government. It was recommended that the rate of market value for the land already converted for residential and commercial purposes be reduced at par with that of the value of agricultural land and excess amount paid be recovered back. The State Government, thereafter, on the request of Rajasthan State Electricity Board (RSEB) diminished the acquired area from 6.80 hactares to 3.64 hactares. The State Government approved the award to the extent of the request of RSEB. The final award was announced on October 26, 1995, whereby following land was released from acquisition:-

(i) Khasra No.1358/1425 area 0.06 hactares
(ii) Khasra No.1400 area 0.13 hactares
(iii) Khasra No.1358 area 0.53 hactares
(iv) Khasra No.1389 area 1.49 hactares

(v) Khasra No.1399(9) area 0.02 hactares

Against this award, reference application was filed which was decided by the Civil Court on December 17, 1999 in favour of objectors. The RSEB filed appeals against the award dated December 17, 1999. In the meanwhile LAO issued notices for recovery of excess amount paid to the petitioners. Hence these writ petitions have been filed by the petitioners challenging the final award dated October 26, 1995 and act of de-acquisition of land, possession of which had already been taken.

3. The respondents in their return supported the final award and the act of de-acquisition of land on the ground that possession of excess land has already been given back in accordance with the final award.

4. I have given my thoughtful consideration to the submissions advanced before me.

5. Before proceeding further it will be useful to refer to Section 48 of the Act, which reads as under:-

> "48. Completion of acquisition not compulsory, but compensation to be awarded when not completed.
> (1) Except in the case provided for in sect 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.
> (2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested together with all costs reasonably incurred by him in the prosecution of the proceedings under the Act relating to the said land.
> (3) The provisions of Part III of this Act shall apply so far as may

be to the determination of the compensation payable under this section."

(Emphasis supplied)

6. Evidently, once possession is taken, the Government shall not be at liberty to withdraw from the acquisition of land.

7. In Mandir Shree Sitaramji Vs. Land Acquisition Collector (AIR 2005 SC 3581), wherein possession of land had already been taken, the Apex Court held as under:- (Para 16)

> "16. Even otherwise, we have seen the scheme sought to be relied upon. We find from the scheme that it only applies in respect of persons/ agencies who own and possess the land. In this case possession of the land had already been taken. The scheme also categorically states that the scheme would not take away the rights of the Delhi Development Authority to acquire for development of Delhi. Thus the Scheme was not applicable to lands of the Appellants. Even under section 48 of the Land Acquisition Act once possession is taken the Government cannot withdraw from the acquisition. We thus see no substance in this contention also."
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> (Emphasis supplied)

8. In Rajasthan Housing Board Vs. Shri Kishan (supra) their Lordships of the Supreme Court indicated as under:- (Para 26)

> "We are of the further opinion that in any event the Government could not have withdrawn from the acquisition under section 48 of the Act inasmuch as the Government had taken possession of the land. Once the possession of the land is taken it is not open to the Government to withdraw from the acquisition. The very letter dated February 24, 1990 relied upon by the counsel from the petitioner recites that "before restoring the possession to the society the amount of development charges will have to be returned back..." This shows clearly that

possession was taken over by the Housing Board. Indeed the very tenor of the letter is, asking the Housing Board as to what development work they had carried out on the land and how much expenditure they had incurred thereon, which could not have been done unless the Board was in possession of the land. The Housing Board was asked to send the full particulars of the expenditure and not to carry on any further development works on that land. Reading the letter as a whole, it cannot but be said that the possession of the land was taken by the Government and was also delivered to the Housing Board. Since the possession of the land was taken, there could be no question of withdrawing from the acquisition under section 48 of the Land Acquisition Act,1894."

(Emphasis supplied)

9. In M/s.Larsen and Toubro Ltd. Vs. State of Gujarat (AIR 1998 Supreme Court 1608) their Lordships of the Supreme Court observed thus:-

(Para 31)

"Principles of law are, therefore, well settled. A notification in the Official Gazette is required to be issued if the State Government decides to withdraw from the acquisition under section 48 of the Act of any land of which possession has not been taken. An owner need not be given any notice of the intention of the State Government to withdraw from the acquisition and the State Government is at liberty to do so. Rights of the owner are well protected by sub-section (2) of Section 48 of the Act and if he suffered any damage in consequence of the acquisition proceedings, he is to be compensated and sub-section (3) of Section 48 provides as to how such compensation is to be determined. There is, therefore, no difficulty when it is the owner whose land is withdrawn from acquisition is concerned. However, in the case (of) a company, opportunity has to be given to it to show cause against any order which the State Government proposes to make withdrawing from the acquisition. Reasons for this are not far to seek. After notification under section 4 is issued, when it appears to the State Government that the land in any locality is needed for a company, any person interested in such land which

has been notified can file objections under section 5-A(1) of the Act. Such objections are to be made to the Collector in writing and who after giving the objector an opportunity of being heard and after hearing of such objections and after making such further enquiry, if any, as the Collector thinks necessary, is to make a report to the State Government for its decision. Then the decision of the State Government on the objections is final. Before the applicability of other provisions in the process of acquisition, in the case of company, previous consent of the State Government is required under section 39 of the Act nor unless (sic) the company shall have executed the agreement as provided in Section 41 of the Act. Before giving such consent, section 40 contemplates a previous enquiry. Then compliance with Rules 3 and 4 of the Land Acquisition (company) Rules,1963 is mandatorily required. After the stage of Section 40 and 41 is reached, the agreement so entered into by the company with the State Government is to be published in the Official Gazette. This is Section 42 of the Act which provides that the agreement on its publication would have the same effect as if it had formed part of the Act. After having done all this, State Government cannot unilaterally and without notice to the company withdraw from acquisition. Opportunity has to be given to the company to show cause against the proposed action of the State Government to withdraw from acquisition. A declaration under section 6 of the Act is made by notification only after formalities under Part VII of the Act which contains Sections 39 to 42 have been complied and report of the Collector under section 5-A(2) of the Act is before the State Government who consents to acquire the land on its satisfaction that it is needed for the company. A valuable right, thus, accrues to the company to oppose the proposed decision of the State Government withdrawing from acquisition. The State Government may have sound reasons to withdraw from acquisition but those must be made known to the company which may have equally sound reasons or perhaps more which might persuade the State Government to reverse its decision withdrawing from acquisition."

(Emphasis supplied)

10. Having analysed Section 48 of the Act, I may conveniently deduce following principles of law:-

(i) The Government shall be at liberty to withdraw from the acquisition of land of which possession has not been taken.
(ii) But once possession of land is taken, the Government cannot withdraw from acquisition.
(iii) Even in the case where possession of land has not been taken and the Government decides to withdraw from the acquisition, a notification in the Official Gazette is required to be issued.

11. In the cases on hand as already noticed, the possession of entire land had already been taken on April 8, 1994 therefore there could be no question of withdrawing from the acquisition under Section 48 of the Act. The Government pursuant to the request of RSEB, could not have diminished the acquired area from 6.80 hactares to 3.64 hactares. The final award dated October 26, 1995 could not have been rendered after taking possession of the land. In my considered opinion, the said award is illegal and deserves to be set aside.

12. In the result, I allow the writ petitions and quash the award dated October 26, 1995. The subsequent notices and other proceedings including act of releasing of lands mentioned in para 2 of this judgment shall also stand set aside. There shall be no order as to costs.

(Shiv Kumar Sharma)J.

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